



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10895675

Date: APR. 19, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an entrepreneur, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by “[a]n official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree.” 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.” 8 C.F.R. § 204.5(k)(3)(i)(B).

The Petitioner initially presented his Bachelor of Arts degree in Business Administration (1989) from [REDACTED] College in [REDACTED] his academic record, and an educational evaluation stating that his degree is the foreign equivalent of a U.S. baccalaureate degree in Business Administration. As evidence of his work experience, the Petitioner offered his [REDACTED] Department of Labor and Employment “Work Contract and Social Security Registration Booklet” listing his job titles and dates of service, but the entries in this booklet do not identify his duties and responsibilities or explain if his experience was progressive. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) specifies that the evidence of progressive experience must be “in the form of letters from current or former employer(s).” The information in the aforementioned booklet is not sufficient to demonstrate that the Petitioner has at least five years of progressive post-baccalaureate experience in entrepreneurship. Without further information and evidence from his employers, the Petitioner has not established that he has at least five years of progressive post-baccalaureate experience in entrepreneurship to constitute the equivalent to an advanced degree in that specialty. See 8 C.F.R. § 204.5(k)(2) and 8 C.F.R. § 204.5(k)(3)(i)(B).

In response to the Director's request for evidence, the Petitioner submitted his Master of Science degree in Business Administration (August 25, 2019) from [REDACTED] University in Florida. The Petitioner

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

received this degree after he filed the petition.⁴ Eligibility, however, must be established at the time of filing. *See 8 C.F.R. § 103.2(b)(1)*. Accordingly, the Petitioner has not established that he qualifies as a member of the professions holding an advanced degree.

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that he intends to continue his "career in the United states as an entrepreneur, specifically by managing and developing national and international companies." He asserted that his proposed endeavor involves "facilitating and generating new business development," as well as providing "business services to U.S. companies, institutions, and individuals in need of expert advice in business management, marketing strategies, business solutions, business development, and innovation development." The Petitioner further noted that he plans to devote his services and financial resources to his company, [REDACTED]

[REDACTED].⁵ In addition, the Petitioner stated: "I will make myself available to companies and individuals in need of my expertise, either as a consultant or an employee."

The record includes information about immigrants' contribution to the U.S. economy, the value of entrepreneurs to our country's economy, the entrepreneurial legacy of immigrants and their children, immigrant tax contributions and spending power, the economic impact of high-growth startups, and the U.S. management consulting industry outlook. In addition, the Petitioner provided articles discussing immigrant entrepreneurship in America, the net fiscal impact of immigration, entrepreneurs' involvement in the pharmaceutical industry, the economic contribution of immigrant-launched businesses, and the impact of small business on the U.S. economy. He also submitted information about immigrants' contribution to business growth, entrepreneurs' involvement in promoting a more inclusive economy, the U.S. pharmaceutical market outlook, entrepreneurs as drivers of economic development, entrepreneurs' value to the global economy, and small companies as engines of job creation. The record therefore shows that the Petitioner's proposed work as a [REDACTED] entrepreneur and business advisor has substantial merit.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global

⁴ The Form I-140, Immigrant Petition for Alien Worker, in this matter was filed on August 22, 2018.

⁵ The Petitioner explained that he is the founder and managing director of [REDACTED] and that he plans to lead its U.S. operations. He further indicated that [REDACTED] is "a Brazilian company in the [REDACTED] industry, specializing in market entry strategies, development of business analyses, strategic business planning, and assisting with government regulations. I am responsible for all sales, trade, and marketing of [REDACTED] for the European, United States, and Latin American markets."

implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

With the appeal, the Petitioner submits a letter from [REDACTED] Director of [REDACTED] a Brazilian [REDACTED] company, expressing interest in collaborating with the Petitioner on distributing [REDACTED] products in the United States and Canada. In addition, the Petitioner presents a “Memorandum of Understanding” he signed with [REDACTED] relating to their business development plans for the [REDACTED] product.⁶ Interest in the Petitioner’s work and his plans for future activities relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890. The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong.

In his appeal brief, the Petitioner asserts that his proposed endeavor stands “to create business opportunities, and generate steep commercial demand, across the United states [REDACTED] sector.” He contends he will develop “the market for the innovative product, [REDACTED] in the United States” and that this undertaking will benefit the U.S. economy through “generating more revenue, and contributing to the creation of jobs in the country.” The Petitioner further argues that his proposed “work fuels a major commercial market, which, in turn, directly contributes to national economic output, as well as prioritizes national interests, such as the domestic job market.” In addition, he claims that his endeavor “will produce significant national benefits, due to the ripple effects of his professional activities.” The Petitioner also states that his undertaking will “contribute to tax revenue, prioritize the domestic job market, and ultimately help increase the flow of money in the U.S. on a national level, which will contribute to U.S. gross domestic product (GDP).”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide business and financial resources to his company [REDACTED] and advisory services to his future clients and partners, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his company, clientele, and partnerships to impact his field or the U.S. [REDACTED] industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record does not show that benefits to the regional or national economy resulting from the Petitioner’s projects would reach the level of “substantial positive

⁶ The appellate submission also includes information about [REDACTED] but the Petitioner has not indicated that he intends to provide business development services for this [REDACTED] product.

economic effects” contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner’s proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has not established that he satisfies the regulatory requirements for classification as a member of the professions holding an advanced degree. Furthermore, as the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.